IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

Crl.MC.No. 293 of 2007()

CC.131/2006 of JUDL. MAGISTRATE OF FIRST CLASS, ERATTUPETTA

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PETITIONER: PETITIONERS/ACCUSED 1 TP 10,12 TO 17

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1. ROJI THOMAS,S/O.THOMAS,AGED 33 YEARS, MUTHIRENTHICKAL HOUSE,POONJAR NEDUBHAGOM VILLAGE, POONJAR THEKKEKKARA P.O.

2. MADHU,S/O.DEVAKI,AGED 45 YEARS, MADUPPARAMBIL HOUSE,MANKUZHIKKUNNU,POONJAR THEKKEKARA P.O.

3. SAJIMON,S/O.RAJAPPAN,AGED 35 YEARS, PALAPPRAMBIL HOUSE,KUNNONNI P.O.

4. JOY,S/O.JOSEPH,AGED 42 YEARS,ILAPPUNKAL, PAYYANITHOTTAM,POONJAR THEKKEKKARA P.O.

5. K.C.BABY,S/O.CHACKO,AGED 45 YEARS, KADAPLACKAL,POONJAR THEKKEKKARA P.O.

6. JOMON,S/O.KUNJEPPU,AGED 30 YEARS, PEKKEKKUZHIYIL,POONJAR,THEKKEKKARA P.O.

7. A.T.GEORGE,S/O.THOMAS AGED 51 YEARS, ARREPLACKAL,PAYYANITHOTTAM,POONJAR THEKKEKKARA.

8. VARKEY @ VAKKACHAN,S/O.DEVASSIA,AGED 45 YEARS,KURISUMMOOTTIL,POONJAR THEKKEKKARA P.O.

9. BENNY,S/O.BABY,AGED 28 YEARS, NAGAPPUZHA,POONJAR,THEKKEKKARA P.O.

10. K.F.KURIAN,AGED 64 YEARS,S/O.FRANCIS, KALAPPURACKAL PARAMBIL HOUSE,POONJAR THEKKEKKARA P.O.

11. CIREESH SURENDARN,S/O.SURENDARN,AGED 23 YEARS,KEERIYANICKAL HOUSE,POONJAR THEKKEKKARA P.O

12. K.P.SANTHOSH,S/O RONNAN,AGED 28 YEARS,
KUDILIL KATUPPUYRA HOUSE,POONJAR THEKKEKKARA.

13. THANKACHAN,S/O.GOPALAN,AGED 52 YEARS,
MUTHUKULAM,POONJAR THEKKEKKARA P.O.

14. ANIL KUMAR,S/O.RAVEEDNRANATH,AGED 38
YEARS,SYAMALA VILASAM,POONJAR P.O.

15. REGHU,S/O.KUTTAN,AGED 42 YEARS,
IDATHINAKAM,POONJAR SOUTH P.O.

16. SASI,AGED 45 YEARS,KEERIYANI,
MARUTHATHANKAL,PATHAMBUZHA P.O POONJAR THEKKEKKARA
VILLAGE.

BY ADV. SRI.MATHAI VARKEY MUTHIRENTHY
SRI.ICANS C.CHAMAKKALA

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

2. BABU THOMAS,S/O.THOMAS,OZHAKKAL HOUSE,
POONJAR HTEKKEKKARA P.O,KOTTAYAM.

BY ADV. SRI.SHAJI THOMAS PORKKATTIL
SRI.BINU PAUL
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.293 of 2007

Dated this the 4th day of April, 2007

ORDER

The petitioners are accused 1 to 10 and 12 to 17 in C.C.No.131 of 2006 pending before the Judicial Magistrate of the First Class, Erattupetta. They face allegations, inter alia, under Section 143 and 386 read with 149 I.P.C. The crux of the allegations against the accused persons in that case, in which cognizance has been taken on the basis of a private complaint filed by the 2nd respondent, is that they were members of an unlawful assembly of persons, who indulged in culpable overt acts against the complainant/2nd respondent herein. The elephant belonging to the 2nd respondent was allegedly responsible for the death of a person. The members of the unlawful assembly allegedly collected in the house of the 2nd respondent and indulged in wanton acts of violence in an attempt to compel and coerce the defacto complainant and the members of his family to part with an amount of Rs.6 lakhs to the brother of the deceased.

2. The learned counsel for the petitioners prays that the extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C may be invoked to quash the proceedings against all the petitioners. Counsel points out that in so far as the 11th accused is concerned, this Court has already invoked the jurisdiction

under Section 482 Cr.P.C to quash the proceedings in so far as it relates to the said 11th accused by Annexure-A4 order. The learned counsel for the petitioners submits that accused 8 and 17 are in the same position as accused No.11 in whose favour, Annexure-A4 order has been passed. There is absolutely no specific allegation against accused 8 and 17 except that they have been shown in the cause title as accused 8 & 17 and in the body of the complaint they are generally referred to under the generic expression “ “. There is no other allegations whatsoever against accused 8 and 17. In these circumstances, following the same logical reasoning as in Annexure-A4, petitioners 8 and 17, I agree with the learned counsel for the petitioners, are entitled to have the proceedings against them quashed by invoking the powers under Section 482 Cr.P.C.

3. The learned counsel for the petitioners further submits that as against accused 1 to 7, 9, 10 and 12 to 16 also, proceedings are liable to be quashed for the reason that the allegations, even if accepted in toto, cannot justifiably lead to an inference of guilt against the said petitioners. The counsel relies on the fact that as a matter of fact the allegation is about a claim for compensation in respect of death of the brother of accused 14, who was killed by an elephant belonging to the complainant. There was no unlawful assembly or any contumacious culpable activity. Superior police officials were

present. Local M.L.A and President of the Panchayat were also present. In their presence, there was a voluntary payment of Rs.6 lakhs as compensation to the relatives of the deceased and allegations are being falsely raised now after the dispute was settled and payment was effected, it is urged. The counsel further submits that even though overt acts are specifically alleged as against accused 1 to 7, 10 and 12 to 16 in the body of the complaint, such allegations are not supported by the sworn statements of the complainant and his brother who were examined before cognizance was taken.

4. It is trite that the allegations in the complaint have to be read along with the sworn statements and neither can be considered sitting in an island of its own. The allegations in the complaint along with the sworn statements of witnesses are to be taken into consideration. The sworn statements of witnesses are not recorded by the chief examination by the counsel. It is, the court, which elicits information. Notwithstanding the fact that detailed allegations are not raised in the sworn statements of the two persons examined, I am satisfied, that sufficient averments having been raised in the complaint filed by the complainant, this is not a fit case where the powers under Section 482 Cr.P.C can or ought to be invoked in favour of the other petitioners. I may hasten to observe that I have not intended to express any opinion on merits about the complicity of the

other petitioners. They will certainly be entitled to claim discharge/acquittal at the appropriate stage by raising appropriate contentions. The learned Magistrate must consider such contentions and no expression of opinion here can be reckoned as having any bearing on that question when the claim of discharge/acquittal, as the case may be, is considered by the learned Magistrate.

5. This Crl.M.C is, in these circumstances, allowed in part. C.C.No.131 of 2006 pending before the learned Judicial Magistrate of the First Class, Erattupetta in so far as it relates to accused 8 and 17 is hereby quashed. Prosecution against the other accused shall continue.

(R.BASANT, JUDGE)

rtr/-